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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,429	02/25/2004	Jay C. Buckey	DC-0257	1958

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EXAMINER	
HUI, SAN MING R	

ART UNIT	PAPER NUMBER
1617	

MAIL DATE	DELIVERY MODE
07/14/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/786,429	BUCKEY ET AL.	
	Examiner	Art Unit	
	San-ming Hui	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim 1 is pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ueno in view of Drug Information Handbook, BMJ (British Medical Journal, Feb 1970, pages 481-483), Weinstein et al., Abstract of Aviat Space Environ Med, 1997;68(10):890-894, and Kohl et al., abstract of Aviat Space Environ Med, 1991,;62(5):392-396, Ueno and Drug Information Handbook are references of record.

Ueno et al. teaches treatment of S. murinus by administering 20mg/kg of chlorpheniramine in treating motion sickness (see the abstract).

Ueno et al. does not expressly teach the dosage of chlorpheniramine as 12mg. Ueno et al. does not expressly teach chlorpheniramine as administered orally.

Drug Information Handbook teaches the human dosage of chlorpheniramine as 8-12mg every 8-12 hours (See the usual dosage section).

BMJ teaches various antihistamine are useful orally to treat vomiting, which is a symptoms of motion sickness (See Table 1, page 483).

Weinstein et al. teaches common pharmacological agents for treating symptoms of motion sickness in the U.S. are over-the-counter antihistamines and they are orally administered.

Kohl et al. teaches oral terfenadine as effective in treating motion sickness.

It would have been obvious to one of ordinary skill in the art at the time of invention to employ chlorpheniramine orally in a dosage of 12 mg in a method of treating motion sickness.

One of ordinary skill in the art would have been motivated to employ chlorpheniramine orally in a dosage of 12 mg in a method of treating motion sickness. The human dose of chlorpheniramine encompasses the dosage herein claimed. Furthermore, other various known anti-histamines are often administered orally when treating motion sickness as evidenced by BMJ, Weinstein et al. and Kohl et al. Thus, administering chlorpheniramine, also an anti-histamine, orally to treat motion sickness would be obvious. Therefore, possessing the teachings of the cited prior art, one of ordinary skill in the art would employ the old and well known compound,

chlorpheniramine, in a dosage of12 mg, orally in the method of treating symptoms of motion sickness.

Response to Arguments

Applicant's arguments filed January 18, 2008 averring the cited prior art's failure to provide motivation to adjust the dosage of chlorpheniramine have been considered, but are not found persuasive. The examiner notes that from the cited prior art, it is clear to see that antihistamines, regardless of the structure and classes which including chlorpheniramine, are known to be useful in treating motion sickness. Therefore, employing antihistaminic dosage of chlorpheniramine for human to treat motion sickness would have been reasonably expected to be effective. From the teachings of the Drug Information Handbook, the dosage of chlopheniramine is 8-12mg every 8-12 hours, which overlaps the herein claimed. In view of the teachings of the Drug Information Handbook, one of ordinary skill in the art would therefore use the antihistaminic dosage, which is 8-12mg every 8-12 hours orally, to treat motion sickness, absent evidence to the contrary. The arguments with regard to the 2-order magnitude difference of the chlorpheniramine dosage have also been considered. Such arguments are not found persuasive. As discussed above, the chlorpheniramine dosage for human used is not derived from Ueno et al., rather, the citing of Ueno is to show that chlorpheniramine is effective in treating motion sickness. The human dosage of chlorpheniramine is well-known in the art as taught in the Drug Information Handbook. Therefore, possessing the teachings of the cited prior art, one of ordinary

skill in the art would have been motivated to employ chlorpheniramine in a method of treating motion sickness.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

San-ming Hui
Primary Examiner
Art Unit 1617

/San-ming Hui/
Primary Examiner, Art Unit 1617